IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.Nos.168 & 169 of 2004
and
Crl.M.P.Nos.1079 &1081 of 2004

S.Arunachalam .. Petitioner/A2 in Crl.R.C.No.168/2004 and A11 in Crl.R.C.No.169/2004

-vs-

State represented by
Inspector of Police
Central Bureau of Investigation
Economic Offence Wing
3rd Building, Shastri Bhavan
26,Haddows Road,
Chennai-600 006
R.C.No.16/E/97 and
RC.NO.4/E/98
respectively ..Respondent/complainant in both revisions

These Revisions are filed under Section 397 r/w 401 Cr.P.C. against the order passed in Crl.M.P.No.429/2002 in C.C.No.17/2001 and Crl.M.P.No.443 of 2002 in C.C.No.15 of 2001 respectively dated 4.11.2003 and 31.10.2003 respectively on the file of Principal Special Judge for CBI Cases(IX Additional Court)Chennai-104.

For petitioner : : Mr.M.N.Padmanabhan
Senior Counsel
for Mr.K.S.Vamsidhar &
Mr.S.Kalyanaraman

For respondent : : Mr.N.Chandrasekaran
Special Public Prosecutor
for CBI Cases.

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C O M M O N O R D E R

Crl.R.C.No.168 of 2004 arises out of an order passed by the Principal Special Judge for CBI Cases(IX Additional Court)Chennai in Crl.M.P.No.429 of 2002 in C.C.No.17 of 2001 which was filed under Section

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239 of Cr.P.C. In the said C.C. No.17 of 2001, the petitioner was arrayed as A2.

Crl.R.C.No. 169 of 2004 had arisen against the order passed by the learned Principal Special Judge for CBI Cases(IX Additional Court) Chennai in Crl.M.P.No.443 of 2002 in C.C.No.15 of 2001 wherein the revision petitioner figures as A11. The above said petition was also filed under Section 239 of Cr.P.C.

2. The relief asked for under the above said petitions before the trial Court is that there was no prima facie case made out against the petitioner to force him to face the ordeal of trial but to discharge him from the charges levelled against him. Apart from this petitioner, the co accused have also filed similar petition under Crl.M.P.No.410 of 2001(by A12). Crl.M.P.No.309 of 2002(by A9). Crl.M.P.No.348 of 2002(by A8) in C.C.No.15 of 2001. The co accused in C.C.No.17 of 2001 have filed Crl.M.P.No.321 of 2002(by A1). Crl.M.P.No.22 of 2003(by A3),Crl.M.P.No.428 of 2002(by A4).Crl.M.P.No. 332 of 2002 (by A5).Crl.M.P.No.526 of 2002(by A6). Crl.M.P.NO.608 of 2002 (by A7). Crl.M.P.No.322 of 2002(by A9) and Crl.M.P.No.323 of 2002 (by A10).

2a) In C.C.No.17 of 2001(Crl.R.C.No.168 of 2004), the specific charge against the accused is that the accused have under conspiracy illegally sanctioned the credit facilities to M/s Sathiyam Foods(P) Limited. All the accused have been charged under Section 120-B of IPC and under Section 420 of IPC. The specific allegation against A2 Thiru S.Arunachalam, the then General Manager of the Indian Bank was that during the relevant point of time, he was in charge of the Management Services and during 1992, when the loan was sanctioned to the accused company, he was one of the Secretaries to the Board and in 1993 , he had endorsed the recommendation for sanctioning the additional loan to the above said Sathiyam Foods(P) Limited. It was contended on behalf of the petitioner before the trial Court in the petition filed by him under Section 239 of Cr.P.C. for discharge that he was in no way connected with the sanction of the loan and had not taken any decision of his own to recommend the above said additional loan to the said Company and that the sanction was not given after consulting with CVC and that there was no evidence for conspiracy.

2b) In C.C.No.15 of 2001(Crl.R.C.No.169/2004) , the petitioner who was arrayed as A11 would contend that at the relevant period ie., on 24.5.1988, the petitioner was on deputation to Kuwait and not in any way dealt with the account of Indian Bank and that he was not involved in the sanction or release of the said credit facilities to M/s Kiran Overseas Ltd (A1) to the tune of Rs.3.59 lakhs and disciplinary authority in the sanction letter itself has mentioned about the fresh proposal dated 23.8.1994 forwarded on 10.10.1994 to the Managing Committee for confirmation and that the credit Department prepared note on 10.10.1994 in respect of the additional sanction of Rs.3.59 lakhs to M/s Kiran Overseas Limited(A1) and the same was considered by the Managing Committee and an

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order of sanction was passed on 18.10.1994 and with regard to the diversion of Rs.50 lakhs from M/s Kiran Overseas Export Limited, the proposal was sent by a branch Office to the Regional Office on 8.10.1994 and the note for approval was sent on 17.10.1994 to the head office and the petitioner's department had submitted a note to ED/CMD on 10.11.1994 for information and not for confirmation. It has been contended by the petitioner/A11 Thiru S.Arunachalam that he had no knowledge about the transaction which took place on 5.10.1994.

3. The learned Senior counsel appearing for the petitioner would brought to the notice of this Court that it has wrongly been mentioned in the charge No.25 framed by the trial Court itself describing the petitioner as a Zonal Manager along with A5 but actually A5 and A7 are the Zonal Managers and not the petitioner(A11). Only on the above ground, the petitioner sought for an order of discharge under Section 239 of Cr.P.C. before the trial Court, which after due deliberation to the submission made by the learned counsel appearing for the petitioner as well as the learned Special Public Prosecutor has come to a conclusion that no relief under Section 239 of Cr.P.C. can be given to the petitioner and accordingly dismissed both the petitions which necessitated the petitioner to come before this Court with these revisions.

4. Now the point for determination in these revisions is that whether the petitioner is liable to be discharged from the charges levelled against him for the reasons stated in the memorandum of revisions?

5. Heard Mr.M.N.Padmanabhan, Senior Counsel appearing for the petitioner and Mr.N.Chandrasekaran, learned Special Public Prosecutor for CBI Cases and considered their rival submissions.

6. The Point:

The accused in a warrant case can be discharged only if the trial Magistrate considers that the charge levelled against the accused is groundless.

6a) In C.C.NO.15 of 2001, under Charge No.1, A11, Thiru S.Arunachalam has been charged under Sections 120-B r/w 420,409,467,468,471 r/w 468 of IPC and Section 13(2)r/w13(1)(d) of Prevention of Corruption Act 1988 and under Section 132 and 135 of Customs Act,1962.

6b) Under Charge No.13, A11 Thiru S.Arunachalam along with the co accused said to have dishonestly abusing the position had facilitated to divert Rs.50 lakhs from the account of A1 company(M/s Kiran Overseas Export Limited, Chennai) and hence charged under Section 409 of IPC along with the co accused.

6c) Under Charge Nos.14 and 16, A11 Thiru S.Arunachalam has been charged under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act

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1988 in two counts.

6d) Under Charge No.23, the charge against A11 along with A10 is that they have negotiated a foreign bill to the tune of Rs.62 lakhs on 16.8.1995 and allowed the same amount as new Packing Credit instead of adjusting the same to earlier Packing Credit liabilities and further released Rs.3.59 lakhs TOD on three occasions with their consent and the same has been neither confirmed nor ratified by the Management Committee and the said amount is still outstanding . So a specific charge under Section 409 of IPC has been framed against A11.

6e) Under Charge No.24 also, this petitioner(A11) has been charged under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988.

7.In C.C.No.17 of 2001, the charge against Thiru S.Arunachalam who has been arrayed as A2 is that during the period from May 1992 to 22.1.1996 along with other co accused conspired in order to get pecuniary advantage to themselves by availing packing facilities in the manner of foreign bill purchase. Foreign bill negotiated and other letter of credit, FDDBP facility under letter of credit by submitting forged/false documents in the name of fictitious firm M/s Sathiyam Foods (A-13) circumventing, laid down procedures of Indian Bank and RBI guidelines and thereby caused wrongful loss to the tune of Rs.31.75 crores to the Indian Bank. Hence the accused (A2) has been charged under Sections 120-B of IPC r/w 409 of IPC, 420,467, 468,472 r/w 468 of IPC and under Section 13(2)r/w 13(1)(d) of Prevention of Corruption Act ,1988.

7a) Charge No.9 has been framed against A2 Thiru S.Arunachalam to the effect that in pursuance of the conspiracy hatched between the petitioner/A2 along with the co accused on 8.5.1992, A2 as GM(MS/Credit) of Indian Bank had dishonestly withheld the decision of the Management Committee for watching the performance relating to the account of A13 for a period of three months and thereby dishonestly permitting the Chief Manager of Indian Bank,Muthialpet Branch(Late George Issac) to discount a total of 20 FBP bills between 10.4.1992 and 28.5.1992 and 16 bills after sanction and parted with a sum of Rs.986.75 lakhs and out of this 36 FBP bills only one was exported by firm M/s Sathiyam Foods(A13) but the amount was diverted to M/s MVR Exports and Maxwell Exim, who exported and also none of the bills were realised within the stipulated period and hence A2 was charged under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988.

7b) Under Charge No.10, A2 was charged under Section 409 of IPC under Charge No.11, along with other co accused , A2 was charged under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988.

7c) Under Charge No.12, the petitioner was charged along with the other co accused under Section 409 of IPC and under Charge No.14 along with A6,A4 and A3 who was charged under Section 13(2)r/w 13(1)(d) of

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Prevention of Corruption Act,1988 and under Charge No.15, along with A6,A4 and A3, A2 was charged under Section 409 of IPC.

7d) Under charge No.18, A2 was charged under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 along with A1,A3,A4 and A6 and under charge No.19 along with A1,A3,A4 and A6 and under charge No.19 along with A1, A3, A4 and A6, A2 was charged under Section 409 of IPC and under Charge No.24 along with A5 and A7, A2 was charged under Section 13(2)r/w 13(1)(d) of Prevention of Corruption Act 1988 and under Charge No.25 along with A5 and A7, A2 was charged under Section 409 of IPC. So the petitioner who is A2 in C.C.No.17 of 2001 and A11 in C.C.No.15 of 2001 is facing many charges both Indian Penal Code as well as under the Prevention of Corruption Act 1988.

8. The learned Senior counsel appearing for the petitioner would point out a mistake crept in charge No.24 in C.C.No.17 of 2001 to the effect that A2 has been described as a Zonal Manager but actually A5 and A7 are the Zonal Managers and not A2.

9. The learned Special Public Prosecutor for CBI Cases would clarify the position by pointing out Sub Section 2 of Section 465 of Cr.P.C. and would contend that the above said error is in no way going to end in failure of justice. The learned Senior Counsel would contend that if at all anybody is responsible for the above said charges, it will be the Chairman of Indian Bank and not this petitioner. To substantiate this, he would rely on a letter written by Thiru T.P.Karunanandan, the then General Manager of Indian Bank. But at this juncture, we need not go into the documents produced before the trial Court to give a finding to what extent, the present petitioner is liable to the charges levelled against him. At the time of trial, the above said defence is very well open to the petitioner to shatter the case of the prosecution. The prosecution has filed the sanction order in both the cases against the accused which also shows about the irregularities committed by the petitioner while sanctioning the additional loan amounting to crores. If the sanction order, according to the learned Senior Counsel for the petitioner is not proper, even then it is open to him to raise the same before the trial Court to the effect that whether the sanctioning authority has applied his mind in a proper perspective while granting the sanction.

10. The learned Special Public Prosecutor for CBI Cases relied on a decision reported in Amar Chand Agarwala-v-Shanti Bose (AIR 1973 Supreme Court 790) and would contend that at this stage, this Court cannot come its logical conclusion one way or the other and when the proceeding of trial before the trial Court has commenced, it is not proper for this Court to interfere with the same. The relevant observation in the above said dictum runs as follows:

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" Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence".

11. The learned Special Public Prosecutor would further contend that all the materials relevant for the case have been placed before the Trial Court by prosecution and that after the dismissal of the discharge petitions, the trial Court has framed charges and the trial has already begun. Under such circumstances, the trial Court alone can come to a conclusion, on the basis of the materials on record whether the charge levelled against the accused has been proved to warrant conviction. For this proposition, the learned Special Public Prosecutor would rely on State of Maharashtra .v.Som Nath Thapa (1996 Supreme Court Cases(cri)820 at 831) wherein the Honourable Apex Court has observed as follows:

" The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage".

12. The learned Special Public Prosecutor would further contend that even if there is any irregularity or error or omission in the order of sanction, unless the Court is of the opinion that the said error or omission or irregularity will ends in failure of justice, the order of sanction under Section 19 of the Prevention of Corruption Act 1988 cannot be brushed aside, relying on a ratio of the Apex Court in State by Police

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Inspector-v-T.Venkatesh Murthy(2004 Supreme Court Cases(cri) 2140 wherein it has been held as follows:

> "A combined reading of Sub Sections(3) and (4) of Section 19 of the Prevention of Corruption Act, 1988 makes the position clear that notwithstanding anything contained in the Criminal Procedure Code 1973, no finding, sentence, and order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of , or any error, omission or irregularity in the sanction required under Sub Section (1) unless in the opinion of that Court a failure of justice has in fact been occasioned thereby".

13. Admittedly sanctioning authority is yet to be examined before the Trial Court. So it is open to the accused to challenge the sanction even before the trial Court, if it contains any error or omission or irregularity.

14. The learned trial Judge has elaborately discussed about the fact as well as the part played by the petitioner(according to the prosecution) has come a definite conclusion in both the Crl.M.P.Nos 429 of 2002 in C.C.No.17 of 2001 and 443 of 2002 in C.C.No.15 of 2001 that there is a prima facie case against the accused to proceed with and that he cannot be discharged from the charges levelled against him. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge in Crl.M.P.Nos 429 of 2002 in C.C.No.17 of 2001 and 443 of 2002 in C.C.No.15 of 2001 which are neither illegal nor infirm to warrant any interference from this Court. Point is answered accordingly.

15. In fine, both Crl.R.C.Nos.168 of 2004 and 169 of 2004 are dismissed confirming the orders passed by the learned Principal Special Judge for CBI Cases(IX Additional Court) Chennai in Crl.M.P.Nos 429 of 2002 in C.C.No.17 of 2001 and 443 of 2002 in C.C.No.15 of 2001 dated 4.11.2003 and 31.10.2003 respectively. Consequently, connected Crl.M.P.Nos.1079 and 1081 of 2004 are also dismissed.

16. Nodoubt, the cases are of the year 2001 which requires speedy disposal. Hence the learned trial Judge is directed to proceed with the trial in C.C.No.17 of 2001 and C.C.No.15 of 2001 and dispose of the same as expeditiously as possible.

sg

Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

1. The Principal Special Judge for CBI Cases(IX Additional Court)
   Chennai-104

2.Inspector of Police,
   Central Bureau of Investigation
   Economic Offence Wing
   3rd Building, Shastri Bhavan
  26,Haddows Road,
  Chennai-600 006.

3. The Special Public Prosecutor for CBI Cases,
    Chennai.

+ One cc to Mr. K.S. Vamsidhar, Advocate sR 32212
AKT (co)
sg 9/6/07

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